IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1014 OF 2005

Namdeo Amruta Mhaske
(since deceased) by L.Rs. ..... Appellant.

Versus

Ramdas Bajaba Belhekar..... Respondent.

Mr. A. P. Vanarase for the Appellant.

Mr. P. J. Pawar for the Respondents.

CORAM : ANOOP V. MOHTA, J.

DATED : 9TH DECEMBER, 2005.

P.C. :

Heard. This second appeal is against the concurrent finding of fact whereby both the courts came to a clear conclusion that no case has been made out by the plaintiff /appellant of any injunction and/or protection as claimed in the suit. Therefore, the trial court by its order dated 3rd January, 1989 dismissed the suit and the same has been confirmed by the lower appellate court by order dated 17th November, 2000. Therefore, the present second appeal.

2. The learned Counsel appearing for the appellant submitted that there is no change in the record in respect of the description of the property in question. That description of the property according to him substantiates his original case. The learned Counsel appearing for the respondent / defendant, however, submitted that the reasoning given by the court based on the material available and as per the pleading raised by the plaintiff / appellant. There is no perversity in the orders passed by both the courts. The plaintiff has failed to prove that defendant has encroached upon the property in question and therefore no relief was granted which factual aspect in the fact and circumstances of the case itself sufficient to dismiss the suit as prayed.

3. Taking all this into account, I see there is no reason to interfere with the concurrent finding given by the courts below. The second appeal is, therefore, dismissed.

Sd/-

(ANOOP V. MOHTA, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1257 OF 2003

IN

SECOND APPEAL NO. 1014 OF 2005

Namdeo Amruta Mhaske
(since deceased) by L.Rs. ..... Appellant.

Versus

Ramdas Bajaba Belhekar..... Respondent.

Mr. A. P. Vanarase for the Appellant.

Mr. P. J. Pawar for the Respondents.

CORAM : ANOOP V. MOHTA, J.

DATED : 9TH DECEMBER, 2005.

P.C. :

In view of the dismissal of the second appeal itself, this civil application does not survive and is disposed of, as such.

Sd/-

(ANOOP V. MOHTA, J.)